



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA-HQ-OAR-2002-0047; FRL-10012-39-OAR]

RIN 2060-AV01

National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) published a final rule in the *Federal Register* on March 26, 2020, to complete the residual risk and technology review (RTR) for the Municipal Solid Waste (MSW) Landfills source category as regulated under national emission standards for hazardous air pollutants (NESHAP). The final rule also made minor changes to the 2016 MSW Landfills New Source Performance Standards (NSPS) and Emission Guidelines and Compliance Times for MSW Landfills to improve implementation of the sets of rules affecting MSW landfills. In this action, the EPA is proposing technical revisions and clarifications for the NESHAP for MSW Landfills established in the March 26, 2020, final rule. These changes correct inadvertent errors and clarify wellhead monitoring requirements for the purpose of identifying excess air infiltration; delegation of authority to state, local, or tribal agencies for “emission standards”; applicability of the General Provisions to affected MSW landfills; and handling of monitoring data for combustion devices during periods of monitoring system breakdowns, repairs, calibration checks, and adjustments. We are proposing further amendments to the 2016 MSW Landfills NSPS to clarify and align the timing of compliance for certain requirements of the 2016 MSW Landfills NSPS for existing MSW landfills that have modified but previously triggered the requirement to install a gas collection and control system (GCCS) under related MSW landfill rules.

DATES: *Comments.* Comments must be received on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Public hearing: If anyone contacts us requesting a public hearing on or before [INSERT DATE 5 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the EPA will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2002-0047, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).
Follow the online instructions for submitting comments.
- Email: a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2002-0047 in the subject line of the message.
- Fax: (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2002-0047.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2002-0047, Mail Code 28221T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery or Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004.
The Docket Center's hours of operation are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>,

including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room was closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Mr. Andrew Sheppard, Natural Resources Group, Sector Policies and Programs Division (E143-03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-4161; fax number: (919) 541-0516; and email address: sheppard.andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. Please note that the EPA is deviating from its typical approach because the President has declared a national emergency. Due to the current Centers for Disease Control and Prevention (CDC) recommendations, as well as state and local orders for social distancing to limit the spread of COVID-19, the EPA cannot hold in-person public meetings at this time.

If requested, the virtual hearing will be held on [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The hearing will convene at 9 a.m. Eastern Time (ET) and will conclude at 12:00 p.m. ET unless the number of registrants indicates more time is needed. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce

further details on the virtual public hearing website at <https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-new-source-performance-standards>.

The EPA will begin pre-registering speakers for the hearing upon publication of this document in the *Federal Register*. To register to speak at the virtual hearing, please use the online registration form available at <https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-national-emission-standards> or contact the public hearing team at (888) 372-8699 or by email at SPPDpublichearing@epa.gov. The last day to pre-register to speak at the hearing will be [INSERT DATE 12 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at:

<https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-national-emission-standards>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to Mr. Andrew Sheppard and the public hearing team. The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-national-emission-standards>. While the EPA expects the hearing to go forward as set forth above, please

monitor our website or contact the public hearing team at (888) 372-8699 or by email at *SPPDpublichearing@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the *Federal Register* announcing updates.

If you require the services of a translator or a special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by [INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2002-0047. All documents in the docket are listed in Regulations.gov. Although listed, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically in Regulations.gov.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2002-0047. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia

submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/commenting-epa-dockets>.

The <https://www.regulations.gov/> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov/>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

The EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the CDC, local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

Submitting CBI. Do not submit information containing CBI to the EPA through <https://www.regulations.gov/> or email. Clearly mark the part or all of the information that you

claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2002-0047. Note that written comments containing CBI and submitted by mail may be delayed and no hand deliveries will be accepted.

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

| | |
|----------------|----------------------------------------------------------|
| CAA | Clean Air Act |
| CBI | Confidential Business Information |
| CFR | Code of Federal Regulations |
| EPA | Environmental Protection Agency |
| GCCS | gas collection and control system |
| HAP | hazardous air pollutant(s) |
| m ³ | cubic meters |
| Mg | megagrams |
| MSW | municipal solid waste |
| NESHAP | national emission standards for hazardous air pollutants |
| NMOC | non-methane organic compounds |
| NSPS | new source performance standards |
| OMB | Office of Management and Budget |

| | |
|-----|------------------------------------|
| RTR | risk and technology review |
| SSM | startup, shutdown, and malfunction |

Organization of this document. The information in this preamble is organized as follows:

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I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the associated regulated industrial source categories that are the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities could be affected by this proposed action because these entities are often the owners or operators of MSW landfills. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (see EPA-450/3-91-030, July 1992), the MSW Landfills source category is any

facility that is an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive commercial waste, sludges, and industrial waste. An MSW landfill may also receive other types of Resource Conservation and Recovery Act (RCRA), subtitle D wastes (see 40 CFR 257.2) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste portions of an MSW landfill that may be separated by access roads. An MSW landfill may be publicly or privately owned.

TABLE 1. INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

| Source Category | NAICS Code ¹ |
|-------------------------------------------------------------|-------------------------|
| Industry: Air and water resource and solid waste management | 924110 |
| Industry: Refuse systems—solid waste landfills | 562212 |
| State, local, and tribal government agencies | 562212, 924110 |

¹ North American Industry Classification System.

B. What is the background for this proposal?

The EPA promulgated the MSW Landfills NESHAP (codified at 40 CFR part 63, subpart AAAA) on January 16, 2003 (68 FR 2227). The NESHAP regulates hazardous air pollutant (HAP) emissions from MSW landfills that are either major or area sources, and applies to MSW landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition and are major sources, are collocated with major sources, or are area source landfills with a design capacity equal to or greater than 2.5 megagrams (Mg) and 2.5 million cubic meters (m³) and have estimated uncontrolled emissions equal to or greater than 50 megagrams per year (Mg/yr) of non-methane organic compounds (NMOC). The NESHAP also applies to MSW landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition and include a bioreactor and are major sources, are collocated with major sources, or are area source landfills with a design capacity equal to or greater than 2.5 million Mg and 2.5 million m³ that were not permanently closed as of January 16, 2003.

The EPA recently completed the RTR on the MSW Landfills NESHAP and promulgated amendments to 40 CFR part 63, subpart AAAA on March 26, 2020 (85 FR 17244). The rule finalized the EPA's determination that risks from this source category are acceptable and that the standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. There were no revisions to the NESHAP based on our analyses conducted under Clean Air Act (CAA) section 112(f). However, the final rule clarified regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); revised wellhead operational standards and corrective action to improve effectiveness and provide compliance flexibility; incorporated provisions from the 2016 MSW Landfills NSPS; and added requirements for electronic reporting of performance test results. The EPA further published a document on October 13, 2020 (85 FR 64398), to correct inadvertent errors in the cross-referencing and formatting of the final rule, as well as minor clarifications to the operational and reporting requirements.

The EPA promulgated the 2016 MSW Landfills NSPS under CAA section 111 (40 CFR part 60, subpart XXX) (81 FR 59332, August 29, 2016). The control requirements in the 2016 MSW Landfills NSPS apply to MSW landfills for which construction, reconstruction, or modification commenced after July 17, 2014, and with a design capacity equal to or greater than 2.5 Mg and 2.5 million m³ and estimated uncontrolled emissions equal to or greater than 34 Mg/yr of NMOC. As part of the final MSW Landfills NESHAP rules, the EPA also finalized minor changes to the 2016 MSW Landfills NSPS. These minor changes included provisions that streamlined requirements for affected sources by allowing them to demonstrate compliance with landfill gas control, operating, monitoring, recordkeeping, and reporting requirements by following the corresponding requirements in the MSW Landfills NESHAP.

This action proposes technical revisions and clarifications to correct inadvertent errors and clarify the compliance and authority requirements for the MSW Landfills NESHAP established in the March 26, 2020, final rule. Additionally, this action proposes clarifying

amendments to the 2016 MSW Landfills NSPS to clarify the timing of compliance for certain requirements for existing MSW landfills that have already triggered requirements to install a GCCS.

C. What is the statutory authority for this action?

The statutory authority for revisions to the MSW Landfills NESHAP (40 CFR part 63, subpart AAAA) is provided by sections 111, 112, and 301 of the CAA, as amended (42 U.S.C. 7411, 7412, and 7401). The statutory authority for revisions to the 2016 MSW Landfills NSPS (40 CFR part 60, subpart XXX) is provided by sections 111 and 301 of the CAA (42 U.S.C. 7411 and 7401).

II. Summary and Rationale of Proposed Changes

The EPA is proposing to correct inadvertent errors in the MSW Landfills NESHAP that were the result of extensive changes to the structure and content of the NESHAP during the development of the final RTR. The EPA is also proposing to clarify the control system timing requirements for MSW landfills that modify and become subject to the 2016 MSW Landfills NSPS that have already triggered the requirement to install emission controls under related MSW landfills regulations.

A. Technical Corrections for 40 CFR Part 63, Subpart AAAA

First, we are proposing to revise the compliance provisions of 40 CFR 63.1960(a)(4)(i) to reestablish the phrase, “for the purpose of identifying whether excess air infiltration exists.” This phrase was removed in error between proposal and promulgation of the NESHAP. The preamble to the final rule indicated that this phrase was removed because the phrase does not apply to temperature. Except for approved alternatives, we require wells to be operated at negative pressure. When wells are operated at negative pressure, excess air can lead to increased temperatures. Therefore, the phrase should be included to identify that the requirement to monitor temperature is so that the operation of the landfill can be monitored to ensure that excess air infiltration is not occurring. The intent was for this paragraph to be consistent with 40 CFR

60.765(a)(5) of the 2016 MSW Landfills NSPS, which contains the phrase, “for the purpose of identifying whether excess air infiltration into the landfill is occurring,” for demonstrating whether excess air infiltration is occurring when putting a well under negative pressure. The proposed revision would correct the requirement and ensure consistency between the NESHAP and NSPS.

We are proposing to revise 40 CFR 63.1961(a)(5)(vi) to eliminate redundancy and to add sampling times. The EPA is revising 40 CFR 63.1961(a)(5)(vi)(A) to change “and” at the end of paragraph (A) to an “or.” This change eliminates redundancy by requiring either paragraph (A) or (B) instead of both (A) and (B). Language defining the sampling time to be used when measuring carbon monoxide (CO) at the wellheads was inadvertently not included in the final rule. A sampling time is proposed for both the samples taken directly from the wellhead and the samples collected in passivated canisters or multi-layer foil sampling bags for analysis. The proposed sampling times are consistent for both sampling methodologies and provide five 1-minute samples that are then averaged to give a CO reading at each monitored wellhead. Additionally, when analyzing samples collected in a canister or bag, in order to ensure the uniformity of the collected sample, the five 1-minute averages resulting from the analysis of the collected sample can vary from one another by no more than 7 parts per million.

We are proposing to revise 40 CFR 63.1975 because it erroneously requires the inclusion of monitoring data that should be excluded from 3-hour compliance averages for combustion temperature. The recent amendments to the provisions at 40 CFR 63.1975 specify that the calculation of 3-hour average combustion temperature for enclosed combustors must include data collected during monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments. In brief, we stated in the *Summary of Public Comments and EPA’s Responses for the Proposed Risk and Technology Review and Amendments for the Municipal Solid Waste Landfills NESHAP*, available in Docket ID No. EPA–HQ–OAR–2002–0047, that because the standard applies at all times, data collected during these periods must be

included in the averages to demonstrate continuous compliance with the NESHAP. We further stated in our response that the data in 40 CFR 63.1975(a) are needed to determine if the landfill operator is meeting the standard and the general duty in 40 CFR 63.1955(c) to operate and maintain the affected source, including the air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices. However, we now recognize that including data from these periods in the combustion temperature averages is not appropriate for demonstrating compliance and is not otherwise necessary. First, the data collected during monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments is not quality-assured and is unlikely to be reliable because it may not reflect accurate measurements of the target analyte in the emission matrix (*e.g.*, calibrations and audits using reference gases would not result in accurate measurements). Therefore, inclusion of these data in calculations would result in inaccurate or misinformed estimates. As such, we have consistently excluded data collected during these periods from data averages or calculations used to report emission or operating levels in other NESHAP (*e.g.*, Nutritional Yeast Manufacturing NESHAP (82 FR 48156, October 16, 2017) and Miscellaneous Organic Chemical Manufacturing NESHAP (85 FR 49084, August 12, 2020)). Further, 40 CFR 63.1965(b) specifies that a deviation occurs when 1 hour or more of the hours during the 3-hour block averaging period does not constitute a valid hour of data for all periods during which the landfill GCCS is required to be operated. In such cases, the enforcement authority will evaluate all reported information and determine if the owner or operator has complied with the general duty in 40 CFR 63.1955(c). The general duty requires the owner or operator to operate and maintain the affected source, including the air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices. In addition, the General Provisions, 40 CFR 63.10(b)(2)(vi), require reporting of each period during which a continuous monitoring system is malfunctioning or inoperative (including out-of-control periods). Therefore, with these amendments, the reported 3-hour temperature data will include only quality-assured

measurements. In addition, reporting under 40 CFR 63.10(b)(2)(vi) will provide the enforcement authority with information on periods of malfunctioning or inoperative measurement monitoring equipment. Taken together, these two periodic reports will provide adequate information for the enforcement authority to make a compliance determination; and, if appropriate based on the circumstances of each case, the enforcement authority could determine that the periods of missing compliance data constitute a violation of the general duty standard.

We also are proposing associated editorial corrections to Table 1 to 40 CFR part 63, subpart AAAA. In Table 1, we intended to specify that 40 CFR 63.10(b)(2)(vi) applies to 40 CFR part 63, subpart AAAA, but inadvertently labeled the entry in Table 1 as 40 CFR 63.10(b)(vi). Similarly, we intended to specify that 40 CFR 63.10(b)(2)(vii) through (xiv) applies to 40 CFR part 63, subpart AAAA, but inadvertently labeled the entry in Table 1 as 40 CFR 63.10(b)(vii) through (xiv). The references to 40 CFR 63.10(b)(vi) and 40 CFR 63.10(b)(vii) through (xiv) are incorrect because these are not actual paragraphs in the general provisions. We are proposing to correct these entries to 40 CFR 63.10(b)(2)(vi) and 40 CFR 63.10(b)(2)(vii) through (xiv), respectively.

Next, we are proposing to revise the implementation and enforcement provisions of 40 CFR 63.1985. The proposed revision would amend paragraph (c) to add the word “emission” to read as follows: “Approval of alternatives to the emission standards in 40 CFR 63.1955 through 63.1962.” The proposed correction would clarify that the EPA intended to restrict delegation of authority for approval of alternatives to the emissions standards but did not intend to preclude delegation of authority for state or local agencies for approval or disapproval of higher operating values and other alternative monitoring or compliance provisions that are needed to reflect a source’s site-specific conditions. We intended to make this clarification in the March 26, 2020, final rule. As explained in the preamble and response to comments, “the EPA intends the use of the phrase “alternative emission standards” to refer to the “standards” for MSW landfill emissions in 40 CFR 63.1955 through 63.1962. The EPA does not intend “alternative emission

standards” to include alternatives for wellhead monitoring in 40 CFR 63.1958” (85 FR 17255). However, we inadvertently excluded the word “emissions” in the final rule text. See section IV.D.2 of the preamble to the final MSW Landfills NESHAP (85 FR 17254) and section 14 of the *Summary of Public Comments and the EPA’s Responses for the Proposed Risk and Technology Review and Amendments for the Municipal Solid Waste Landfills NESHAP*, available in Docket ID No. EPA–HQ–OAR–2002–0047 for additional information.

We are also proposing revisions to Table 1 to Subpart AAAA—Applicability of NESHAP General Provisions to Subpart AAAA. First, we are proposing to revise the Table 1 entry for 40 CFR 63.6(f)(1). We propose to change the “Yes” to a “No” in the column labeled, “Applicable to subpart AAAA before September 28, 2021.” Section 63.6(f)(1) addresses “Exemption of nonopacity emission standards during SSM.” In the final rule published March 26, 2020, the EPA removed the exemptions for periods of SSM to reflect the vacatur by the United States Court of Appeals for the District of Columbia Circuit (the court) of provisions governing the emissions of HAP during periods of SSM. See *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008). As explained in the final rule, the court held that under CAA section 302(k), emissions standards or limitations must be continuous in nature and that the SSM exemptions in 40 CFR 63.6(f)(1) and (h)(1) violate this CAA requirement.

In the final rule, we revised Table 1 to subpart AAAA of 40 CFR part 63, which incorporated the SSM exemption in 40 CFR 63.6(f)(1), to specify that 40 CFR 63.(f)(1) applies before but not after the compliance date of September 27, 2021. However, because the SSM exemption in 40 CFR 63.6(f)(1) has been vacated, it has no legal effect and the language in Table 1 suggesting that 40 CFR 63.6(f)(1) applies until September 27, 2021, was incorrect and misleading. The SSM exemption in 40 CFR 63.6(f)(1) has been without legal effect since the date of the court order in *Sierra Club v. EPA*. To correct this error, we are proposing an amendment to the General Provisions Table 1 entry for 40 CFR 63.6(f)(1) by changing the entry in the column labeled “Applicable to subpart AAAA before September 28, 2021” from “Yes” to

“No.” This amendment only revises the table entry related to 40 CFR 63.6(f)(1) to reflect the court order vacating the General Provisions exemption language. See the final rule for any other requirements related to SSM and the requirement to comply at all times.

We propose to correct the Table 1 entry for 40 CFR 63.10(d)(3). We are proposing to change the “Yes” to a “No” in the column labeled, “Applicable to subpart AAAA no later than September 27, 2021.” Section 63.10(d)(3) addresses reporting of visible emissions observations. Because no opacity or visible emission observations are required by 40 CFR part 63, subpart AAAA, 40 CFR 63.10(d)(3) does not apply. In the *Summary of Public Comments and the EPA’s Responses for the Proposed Risk and Technology Review and Amendments for the Municipal Solid Waste Landfills NESHAP*, available in Docket ID No. EPA–HQ–OAR–2002–0047, the EPA pointed out that the 40 CFR part 63 General Provisions contain more than 150 references to opacity and visible emission standards. The EPA noted that to revise Table 1 to specify applicability of each subparagraph that addresses opacity or visible emission standards would render the table dense, tedious, and difficult to comprehend, so we chose not to follow that approach. However, because this is one of the three instances where opacity or visible emissions are directly or uniquely addressed in the table, we believe that changing the table will be less confusing. Because there are no opacity or visible emission standards, as listed in the table entry for 40 CFR 63.6(h) and 63.9(f), there would have been nothing to report in the 40 CFR 63.10(d)(3) entry. Therefore, this correction does not result in adding or removing any practical requirements for landfills. Thus, we are proposing to correct the Table 1 entry for 40 CFR 63.10(d)(3) to change the “Yes” to a “No” in the column labeled, “Applicable to subpart AAAA no later than September 27, 2021.”

B. Clarification of Control System Timing Requirements for Modified Landfills in 2016 MSW Landfills NSPS

The 2016 MSW Landfills NSPS requires that a GCCS must be installed within 30 months after an MSW landfill that equals or exceeds the design capacity threshold (2.5 million Mg and

2.5 million m³) files a report indicating that it has reached or exceeded an NMOC emissions level of 34 Mg/yr. 40 CFR 60.762(b)(2)(ii). This threshold for GCCS installation is lower than several related federal MSW landfills regulations, such as the 1996 MSW Landfills NSPS and Emission Guidelines, in which the emissions threshold for GCCS installation is 50 Mg/yr NMOC. Many landfills that modify and become subject to the 2016 MSW Landfills NSPS previously exceeded the 50 Mg/yr NMOC threshold set by those other federal regulations and have, therefore, already installed and begun operating GCCS. However, the 2016 MSW Landfills NSPS did not explicitly specify a compliance date for landfills with existing GCCS to transition operations to meet the amended requirements upon modification. Therefore, some landfills with existing GCCS that have become subject to 2016 MSW Landfills NSPS have followed the compliance requirements and timeline for installation of GCCS at a new landfill (*i.e.*, 30 months).

It was not the EPA's intent in promulgating the 2016 MSW Landfills NSPS to permit a landfill that was already classified as a "controlled landfill" pursuant to either the 1996 MSW Landfills NSPS at 40 CFR part 60, subpart WWW, or the emission guidelines at subparts Cc or Cf to be permitted an additional 30-month period before compliance with the requirements of the 2016 MSW Landfills NSPS would be required. As the EPA explained in the rulemaking for the 2014 proposal (79 FR 41805), the 30-month period provided in 40 CFR 60.762(b)(2)(ii) is intended as an initial one-time lag period to allow adequate time for landfills to install and start up GCCS. New "greenfield" landfills would be starting from scratch with designing, permitting, and building GCCS infrastructure. In contrast, existing landfills that modified and become subject to the 2016 MSW Landfills NSPS from another subpart but have already triggered the design plan requirements from their previous MSW landfill rule, have already completed the GCCS design. These landfills have completed permitting and construction of all or significant portions of GCCS infrastructure. The only new requirements that a modified source is subject to are the updated monitoring, recordkeeping, and reporting requirements promulgated in the 2016

MSW Landfills NSPS, which do not require 30 months of additional time for compliance. The EPA notes that these landfill owners and operators will be required to comply with similar monitoring, reporting, and recordkeeping requirements under the MSW Landfills NESHAP by September 27, 2021, regardless of when they modify. Given the 30-month period was plainly intended to provide sources sufficient time for the initial installation of GCCS, it, therefore, clearly was not the EPA's intent to provide that same period of time for compliance for modified sources that do not need to install GCCS. The EPA acknowledges, however, that the regulations promulgated in the 2016 MSW Landfills NSPS did not clearly provide for the compliance timeframe for modifying sources. To correct this issue, the EPA is making four regulatory text edits to clarify the applicable requirements for modifying landfills.

First, the EPA is proposing to clarify the definition for landfills that are considered to be a controlled landfill. The 2016 MSW Landfills NSPS identifies and defines the term "controlled landfill" as one that has triggered the emissions threshold of 34 Mg/yr of NMOC or more and submitted its collection and control system design plan. The 2016 MSW Landfills NSPS requires the design plan to be submitted within 1 year of the first NMOC annual emission rate report that is equal to or greater than 34 Mg/yr of NMOC. While this language accurately describes landfills that reach the 34 Mg/yr NMOC emissions threshold after promulgation of the 2016 MSW Landfills NSPS, its applicability to landfills that had exceeded the emissions threshold and submitted a design plan under previously promulgated landfill regulations was not specified. The EPA is proposing to revise the definition of the term "controlled landfill" in 40 CFR 60.761 to clarify that a landfill is considered controlled at the time a collection and control system design plan is submitted in compliance with whichever applicable regulation first required submission of a collection and control system design plan for the source in question, whether pursuant to 40 CFR 60.762(b)(2)(i) or 40 CFR part 60, subpart WWW; or pursuant to a Federal plan or EPA-approved and effective state plan or tribal plan that implements either 40 CFR part 60, subpart Cc or Cf.

Second, the EPA is proposing to amend 40 CFR 60.767(d) to clarify that submittal of an initial design plan includes submittal under not only the 2016 MSW Landfills NSPS, but also under 40 CFR part 60, subpart WWW, or a state or Federal plan implementing 40 CFR part 60, subpart Cc or Cf. As stated in 40 CFR 60.767(d), revised design plans are required 90 days before expanding operations into an area not covered by a previously approved design plan, or prior to installing or expanding a system in a way inconsistent with the initial design plan. By making this clarification to the introductory paragraph for the revised GCCS design plan requirements, the EPA is clarifying that the landfill owner or operator would only need to submit a revised design plan if the initial design plan submitted under any of these subparts required changes.

Third, the EPA is proposing to amend 40 CFR 60.762(b)(2) to clarify when an initial or revised GCCS design plan is required to be submitted. The EPA is proposing adding language to 40 CFR 60.762(b)(2)(i) to clarify that the requirement to submit a collection or control system design plan can be met with either an initial *or revised* plan once the NMOC emission rate threshold is exceeded. The initial design plan is required to be submitted within 1 year of the first time a landfill exceeded the threshold of 34 Mg/yr of NMOC.

Finally, to clarify the EPA's intent that the timing be linked to a landfill's emissions regardless of the specific subpart the report was submitted under, the EPA is also proposing to add language to 40 CFR 60.762(b)(2)(ii)(A) to add NMOC emission rate reports submitted under any 40 CFR part 60 or 40 CFR part 62 MSW Landfills regulation, and not only a report submitted under the 2016 MSW Landfills NSPS.

With these proposed amendments, the EPA intends to clarify that MSW landfills that become subject to the 2016 MSW Landfills NSPS due to modification but have already been required to submit a collection and control system under another MSW landfills regulation do not restart the 30-month compliance timeline for installation of an initial GCCS and do not need to duplicate previously submitted reports. Rather, these landfills should follow the pathway

established for landfills to submit revised design plans and meet any applicable requirements that were not previously required by another subpart. Specifically, the proposed amendments should clarify : (1) controlled landfills are those that already met requirements to install a GCCS under any of the promulgated MSW landfill regulations; (2) controlled landfills that have previously submitted initial NMOC emission rate reports do not need to resubmit the initial reports; (3) controlled landfills that have an operational GCCS do not need to resubmit annual NMOC reports; (4) controlled landfills do not need to resubmit initial design plans; (5) controlled landfills do need to submit revised design plans 90 days before expanding operations into an area not covered by a previously approved design plan, or prior to installing or expanding a system in a way inconsistent with the initial design plan; and (6) controlled landfills would be required to prepare a site-specific treatment system monitoring plan, as applicable.

As noted above, some controlled landfills that have become subject to the requirements of the 2016 MSW Landfills NSPS have been allowed 30 months to comply with the requirements of the rule. If the EPA finalized the proposed amendments, 30 months will only be allowed for the initial installation of a GCCS for landfills newly subject to these rules. Controlled landfills will be expected to comply with operational, monitoring, reporting, and recordkeeping requirements immediately upon becoming subject to the 2016 MSW Landfills NSPS, unless an alternate timeline has been approved. These operational, monitoring, reporting, and recordkeeping requirements are substantively similar or the same as the requirements for these landfills under the MSW Landfills NESHAP. Landfills subject to the NESHAP must meet these requirements no later than September 27, 2021.

The EPA requests comment on whether the proposed modifications to the 2016 MSW Landfills NSPS regulations adequately clarify the expected compliance deadlines for controlled landfills that become subject to the 2016 MSW Landfills NSPS through modification and/or whether other approaches are needed to align the timing provisions of the 2016 MSW Landfills NSPS with the timing provisions of the MSW Landfills NESHAP. The EPA is not otherwise

reopening or accepting comments on any other aspects of the 2016 MSW Landfills NSPS not discussed in this proposal.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to OMB for review.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0505 for the NESHAP and OMB control number 2060-0697 for the NSPS. The proposed revisions include technical corrections to the NESHAP and NSPS and do not pose any changes to the information collection burden for either.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. The small entities subject to the requirements of the NESHAP and NSPS may include private small business and small governmental jurisdictions that own or operate landfills, but the cost for complying are owned by a small entity. This action only proposes technical corrections to provisions from the March 26, 2020, final RTR rulemaking and

clarifying amendments to the 2016 MSW Landfills NSPS and does not implement new requirements. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Although state, local, or tribal governments own and operate landfills subject to these final amendments, this action proposes only technical corrections to provisions from the March 26, 2020, final RTR rulemaking and clarifying amendments to the 2016 MSW Landfills NSPS and there are no impacts resulting from this regulatory action.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. As explained in the March 26, 2020, final rule, the EPA previously identified one tribe that owns three landfills that are potentially subject to the MSW Landfills NESHAP. However, this action proposes only technical corrections to provisions from the March 26, 2020, final RTR rulemaking and clarifying amendments to the 2016 MSW Landfills NSPS and does not impose any new requirements on tribes.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may

disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This regulatory action is a technical correction to a previously promulgated regulatory action and does not have any impact on human health or the environment.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Michael S. Regan,
Administrator.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR parts 60 and 63 as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XXX—Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014

2. Amend section 60.761 by revising the definition of “Controlled landfill” to read as follows:

§60.761 Definitions.

* * * * *

Controlled landfill means any landfill at which collection and control systems are required under this subpart as a result of the nonmethane organic compounds emission rate. The landfill is considered controlled at the time a collection and control system design plan is submitted in compliance with either §60.762(b)(2)(i), subpart WWW of this part, or a Federal plan or EPA-approved and effective state plan or tribal plan that implements either subpart Cc or Cf of this part, whichever regulation first required submission of a collection and control system design plan for the landfill.

* * * * *

3. Amend section 60.762 by revising paragraphs (b)(2)(i) and (b)(2)(ii)(A) to read as follows:

§60.762 Standards for air emissions from municipal solid waste landfills.

* * * * *

(b) * * *

(2) * * *

(i) *Calculated NMOC Emission Rate*. Submit an initial or revised collection and control system design plan prepared by a professional engineer to the Administrator as specified in §60.767(c) or (d); calculate NMOC emissions using the next higher tier in §60.764; or conduct a surface emission monitoring demonstration using the procedures specified in §60.764(a)(6). The collection and control system must meet the requirements in paragraphs (b)(2)(ii) and (iii) of this section.

(ii) * * *

(A) The first annual report submitted under parts 60 or 62 of this subchapter in which the NMOC emission rate equals or exceeds 34 megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than 34 megagrams per year, as specified in §60.767(c)(4); or

* * * * *

4. Amend section 60.767 by revising paragraph (d) introductory text to read as follows:

§60.767 Reporting requirements.

* * * * *

(d) *Revised design plan*. The owner or operator who has already been required to submit a design plan under paragraph (c) of this section, subpart WWW of this part, or a Federal plan or EPA-approved and effective state plan or tribal plan that implements subparts Cc or Cf of this part, must submit a revised design plan to the Administrator for approval as follows:

* * * * *

**PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR
POLLUTANTS FOR SOURCE CATEGORIES**

5. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart AAAA—National Emission Standards for Hazardous Air Pollutants: Municipal
Solid Waste Landfills**

6. Amend section 63.1960 by revising paragraph (a)(4)(i) to read as follows:

§63.1960 Compliance provisions.

(a) * * *

(4) * * *

(i) Once an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with the operational standard for temperature in § 63.1958(c)(1), the owner or operator must monitor each well monthly for temperature for the purpose of identifying whether excess air infiltration exists. If a well exceeds the operating parameter for temperature as provided in § 63.1958(c)(1), action must be initiated to correct the exceedance within 5 days. Any attempted corrective measure must not cause exceedances of other operational or performance standards.

* * * * *

7. Amend section 63.1961 by revising paragraph (a)(5)(vi) to read as follows:

§63.1961 Monitoring of operations.

(a) * * *

(5) * * *

(vi) Monitor and determine carbon monoxide concentrations, as follows:

(A) Collect the sample from the wellhead sampling port in a passivated canister or multi-layer foil gas sampling bag (such as the Cali-5-Bond Bag) and analyze that sample using EPA Method 10 of appendix A-4 to part 60 of this chapter, or an equivalent method with a detection limit of at least 100 ppmv of carbon monoxide in high concentrations of methane; or

(B) Collect and analyze the sample from the wellhead using EPA Method 10 of appendix A-4 to part 60 of this chapter to measure carbon monoxide concentrations.

(C) When sampling directly from the wellhead, you must sample for 5 minutes plus twice the response time of the analyzer. These values must be recorded. The five 1-minute averages are then average to give you the carbon monoxide reading at the wellhead.

(D) When collecting samples in a passivated canister or multi-layer foil sampling bag, you must sample for the period of time needed to assure that enough sample is collected to provide five (5) consecutive, 1-minute samples during the analysis of the canister or bag contents, but no less than 5 minutes plus twice the response time of the analyzer. When analyzing canister or bag samples, the analysis will continue until a minimum of five (5) consecutive, 1-minute averages recorded by the data acquisition system differ by no more than 7 ppm. The five (5) consecutive, 1-minute averages are then averaged together to give you a carbon monoxide value from the wellhead.

* * * * *

8. Amend section 63.1975 by revising the introductory paragraph to read as follows:

§63.1975 How do I calculate the 3-hour block average used to demonstrate compliance?

Before September 28, 2021, averages are calculated in the same way as they are calculated in §60.758(b)(2)(i) of this subchapter for average combustion temperature and §60.758(c) for 3-hour average combustion temperature for enclosed combustors), except that the data collected during the events listed in paragraphs (a) through (d) of this section are not to be included in any average computed under this subpart. Beginning no later than September 27, 2021, averages are calculated according to §63.1983(b)(2)(i) for average combustion temperature and § 63.1983(c)(1)(i) for 3-hour average combustion temperature for enclosed combustors, except that the data collected during the event listed in paragraph (a) of this section are not to be included in any average computed under this subpart.

* * * * *

9. Amend section 63.1985 by revising paragraph (c) to read as follows:

§63.1985 Who enforces this subpart?

* * * * *

(c) The authorities that will not be delegated to state, local, or tribal agencies are as follows. Approval of alternatives to the emission standards in §§63.1955 through 63.1962.

Where this subpart references part 60, subpart WWW of this subchapter, the cited provisions will be delegated according to the delegation provisions of part 60, subpart WWW of this subchapter. For this subpart, the EPA also retains the authority to approve methods for determining the NMOC concentration in §63.1959(a)(3) and the method for determining the site-specific methane generation rate constant k in §63.1959(a)(4).

10. Amend Table 1 to subpart AAAA of part 63 by:

- a. Revising the entry “§63.6(f)(1)”;
- b. Removing the entries for “§63.10(b)(vi)” and “§63.10(b)(vii)-(xiv)” and adding in their places “§63.10(b)(2)(vi)” and “§63.10(b)(2)(vii)-(xiv)”, respectively; and
- c. Revising the entry for “§63.10(d)(3).”

The revisions and additions read as follows:

* * * * *

Table 1 to Subpart AAAA of Part 63—Applicability of NESHAP General Provisions to Subpart AAAA

| Part 63 citation | Description | Applicable to subpart AAAA before September 28, 2021 | Applicable to subpart AAAA no later than September 27, 2021 | Explanation |
|-------------------------|-------------------------------------------------------|-------------------------------------------------------------|--------------------------------------------------------------------|--------------------|
| * * * * * | | | | |
| §63.6(f)(1) | Exemption of nonopacity emission standards during SSM | No | No | |
| * * * * * | | | | |
| §63.10(b)(2)(vi) | Recordkeeping for CMS malfunctions | No ¹ | Yes | |
| §63.10(b)(2)(vii)-(xiv) | Other Recordkeeping of compliance measurements | No ¹ | Yes | |
| * * * * * | | | | |
| §63.10(d)(3) | Reporting of visible emission observations | No ¹ | No | -- |
| * * * * * | | | | |

¹Before September 28, 2021, this subpart requires affected facilities to follow part 60, subpart WWW of this subchapter, which incorporates the General Provisions of part 60 of this subchapter.

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